

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 97-0615 ST
SALES AND USE TAX

For Tax Periods: 1994 Through 1996

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Issues

1. Sales and Use Tax- Truck Bed

Authority: IC 6-2.5-3-2, 6-2.5-3-2 (b), IC 6-2.5-3-3 (b) *Harlan Sprague Dawley, Inc. v. Department of State Revenue*, 605 N.E. 2d 1222 (Ind. Tax Ct. 1992), *Cave Stone, Inc. v. Department of State Revenue*, 605 N.E. 2d 520 (Ind. 1983).

Taxpayer protests the assessment of tax on a truck bed.

2. Sales and Use Tax- Loader

Authority: IC 6-2.5-3-2 (b), 45 IAC 2.2-5-8(k).

Taxpayer protests the assessment of tax on a loader.

Statements of Facts

Taxpayer is an Indiana corporation that collects dead animals, restaurant grease, animal afterbirth and other raw materials and processes them into fertilizer. The Department assessed additional sales and use tax, interest and penalties after a routine audit. Taxpayer timely protested the assessment. Further facts will be provided as necessary.

1. Sales and Use Tax-Truck Bed

Discussion

IC 6-2.5-3-2 imposes the use tax on “the storage, use, or consumption of tangible personal property in Indiana,. . .” Certain items of manufacturing equipment qualify for exemption to the use tax pursuant to the following provisions of IC 6-2.5-5-3 (b):

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, manufacture, fabrication, assembly, extraction mining, processing, refining, or finishing of other tangible personal property.

It is well established that in Indiana tax exemptions are strictly construed and taxpayers bear the burden of proving entitlement to an exemption. *Harlan Sprague Dawley, Inc. v. Department of State Revenue*, 605 N.E. 2d 1222(Ind. Tax Ct. 1992).

Indiana’s manufacturing exemption was considered in *Cave Stone, Inc. v. Department of State Revenue*, 605 N.E. 2d 520 (Ind. 1983). That case concerned whether trucks used to haul crude stone to a crusher were entitled to a manufacturing exemption from the sales and use tax. The Court examined the statute and determined that the fact that the word “direct” was used twice indicated that not all manufacturing machinery is entitled to exemption. Rather only that machinery which is “directly used in the direct production” is entitled to the exemption. To determine if a manufacturing machine qualified for this exemption, the Court considered whether the piece of machinery was an essential and integral part of the production process and have an immediate effect upon the production of the final product.

Taxpayer agrees that the truck chassis is subject to the use tax. Taxpayer contends, however, that its truck bed is entitled to the manufacturing equipment exemption because it is an integral part of the process of producing fertilizer. The truck bed is specifically designed and built to transport the raw materials of fertilizer such as dead animals and restaurant grease. The Indiana State Board of Animal Health requires that truck beds used for these purposes meet certain requirements before they can carry Taxpayer’s raw materials. This requirement alone does not transform Taxpayer’s truck bed into machinery entitled to the manufacturing machinery exemption because the truck bed is used to transport Taxpayer’s raw materials to the factory where the production process begins.

Alternatively Taxpayer argues that the truck bed qualifies for exemption pursuant to IC 6-2.5-5-2(b):

Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for use in conjunction with the production of food or commodities for sale;
- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food or commodity production; and
- (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

Taxpayer's truck bed does not qualify for this exemption because it is used to transport all the raw materials of fertilizer, not just animal waste. Further, Taxpayer is not engaged in the production of food or commodities for sale.

Finding

Taxpayer's first point of protest is denied.

2. Sales and Use Tax-Loader

Discussion

Taxpayer's second point of protest concerns the assessment of additional use tax on a loader. Taxpayer contends that the loader qualifies for the manufacturing exemption of IC 6-2.5-5-3(b).

After the raw materials arrive at Taxpayer's facility, they are dumped on a concrete floor. Since not all raw materials are processed into fertilizer in the same way, they must be sorted. The subject loader is used to separate the raw materials into groupings. The raw materials in each grouping can be processed in the same manner. For example, animals must be skinned before they can be further processed. After the raw materials are sorted, Taxpayer initiates the process of grinding and changing the raw materials into fertilizer.

The direct production of property is defined in the following provisions of 45 IAC 2.2-5-8(k):

Direct production, manufacture, fabrication, assembly, or finishing of tangible personal property is performance as a

business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired.

Taxpayer does not change or alter the form or character of the raw material until after the sorting. Therefore the sorting is a pre-production process and the loader which sorts the material is subject to tax.

Finding

Taxpayer's second point of protest is denied.